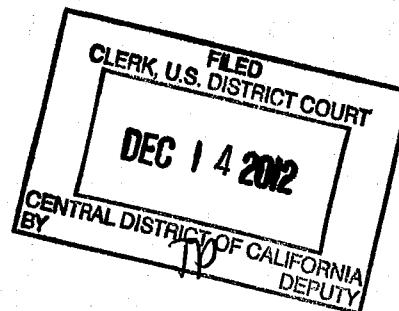


ORIGINAL

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Attorneys for Plaintiff  
The Richard Dawkins Foundation for Reason  
and Science



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

THE RICHARD DAWKINS  
FOUNDATION FOR REASON AND  
SCIENCE, a Delaware non-profit  
corporation,

CV12-10694 CBM(AJWx)

Plaintiff,

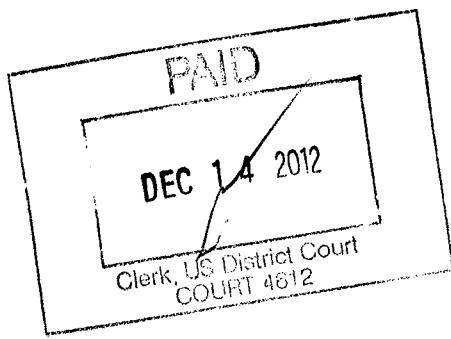
COMPLAINT

v.  
UPPER BRANCH PRODUCTIONS,  
INC., a California corporation,

Defendant.

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COMPLAINT



Case 2:12-cv-10694-CBM-AJW Document 1 Filed 12/14/12 Page 2 of 36 Page ID #:2

JAMARIO

## **SUMMARY OF CLAIMS**

1. The Richard Dawkins Foundation for Reason and Science (the “Foundation”) brings this lawsuit seeking a declaration of non-infringement of the works claimed by Defendant Upper Branch Productions, Inc. (“Upper Branch”) in a case that Upper Branch filed in this Court on October 12, 2012 styled *Upper Branch Productions, Inc. v. InnerWorkings, Inc., et al.*, Case No. CV12-8789 MWF (RZx) (the “Related Case”), which is pending before the Hon. Michael W. Fitzgerald, and redress for Upper Branch’s violation of section 512(f) of the Digital Millennium Copyright Act (“DMCA”).

2. The Foundation is a non-profit entity that exists to support scientific education, critical thinking, and evidence-based understanding of the natural world in the quest to overcome religious fundamentalism, suppression, intolerance, and suffering. As part of its mission to educate the public, the Foundation creates videos and DVDs of lectures and discussions among prominent professors and scientists concerning life, the universe, and the role of science in human life. The DVDs are used to help fund the video projects and the Foundation makes the videos available to everyone, everywhere, all the time, for free, through the Foundation's YouTube channel and the Foundation's web site. The DVDs and the videos serve the Foundation's goals by furthering the Foundation's education mission and by generating donations for the Foundation.

3. Through its owner Josh Timonen, Upper Branch has asserted meritless allegations of copyright infringement against the Foundation in the Related Case. Upper Branch has also recently used section 512 of the DMCA to file a series of bad faith copyright notifications against the Foundation’s YouTube channel causing the shut down of the entire channel and the removal of all of the Foundation’s videos.

4. Contrary to Upper Branch's allegations and notices, the Foundation owns, controls, and/or otherwise has full rights to use and to distribute to the public all of the DVDs and videos. In particular, the Foundation organized all of the events and

1 speakers depicted in the videos and DVDs and requested, directed, paid for, and  
2 controlled the creation of the videos and DVDs. The Foundation hired and paid  
3 Timonen and Upper Branch more than \$280,000 to film and edit the videos, to  
4 manage the Foundation's website and YouTube channel, to post the videos to the  
5 Foundation's web site and YouTube channel, and to create the DVDs to sell to the  
6 public for the benefit of the Foundation.

7       5. And Timonen himself posted the videos to the Foundation's website and  
8 YouTube channel over a period of several years. These videos have been available to  
9 the public through the Foundation's web site and YouTube channel for years without  
10 any suggestion from Timonen or Upper Branch that such conduct infringed Upper  
11 Branch's alleged copyrights. Upper Branch's copyright notices are specious and were  
12 filed only because Timonen and Upper Branch recently lost a lawsuit that they had  
13 filed against the Foundation in California state court and were ordered to pay the  
14 Foundation \$55,000 in attorney fees. *See Timonen v. The Richard Dawkins*  
15 *Foundation for Reason and Science*, Case No. EC057388, Superior Court of  
16 California, County of Los Angeles. Upper Branch filed its YouTube notices without  
17 any warning to the Foundation and has refused to provide the Foundation with copies  
18 of its notices.

19       6. Accordingly, the Foundation asks for a declaration of non-infringement  
20 of the works claimed by Upper Branch in the Related Case, Case No. CV12-8789  
21 mwf (rzX), for sanctions against Upper Branch for violation of section 512(f) of  
22 DMCA, for an order directing Upper Branch immediately to withdraw its copyright  
23 notices and to authorize YouTube to reinstate the Foundation's YouTube channel, and  
24 for the other relief described below.

## **JURISDICTION & VENUE**

26 | 7. This Court has subject matter jurisdiction over this matter pursuant to the  
27 | Copyright Act (17 U.S.C. §§ 101 *et seq.*) and 28 U.S.C. §§ 1331, 1338, and 2201.

8. On information and belief, including Upper Branch's allegations in the Related Case, Upper Branch is a California corporation with its principal place of business in Los Angeles, California and is subject to the personal jurisdiction of this Court.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Upper Branch resides in this district.

## PARTIES

10. The Foundation is, and at all material times was, a private 501(c)(3) charitable corporation incorporated in the State of Delaware with its principal place of business in Colorado. The Foundation's mission is to support scientific education, critical thinking and evidence-based understanding of the natural world in the quest to overcome religious fundamentalism, superstition, intolerance and suffering.

11. The Foundation was formed in 2006 by Professor Richard Dawkins (“Professor Dawkins”), an internationally renowned evolutionary biologist, university professor, lecturer, award winning intellectual and best-selling author, and perhaps the world’s best known and most respected atheist. Professor Dawkins is the founder of the Foundation as well as its United Kingdom sister organization the Richard Dawkins Foundation for Reason and Science, Ltd. (the “UK Foundation”). The UK Foundation has the same charitable, political and educational goals as the Foundation and is a “Registered Charity” in Great Britain.

12. The Foundation's Executive Director is Robin Cornwell. Dr. Cornwell was a volunteer at the Foundation before becoming its Executive Director.

13. The Foundation is informed and believes that Upper Branch is a California corporation with its principal place of business located in Los Angeles County, California.

14. The Foundation is informed and believes that Upper Branch is wholly owned and controlled by Timonen.

## FACTS

## **Upper Branch's and Timonen's Work For The Foundation**

15. In or around 2006, Timonen began doing work benefiting Professor Dawkins personally, including website design and maintenance. Over time Timonen's efforts for Professor Dawkins expanded to encompass work performed for the Foundation, including filming and editing videos and DVDs for the Foundation, DVD production, website design and maintenance for the Foundation, making videos available to the public by, among other things, posting videos to the Foundation's website and YouTube channel, monitoring comments on the Foundation's web site, and operation of the richarddawkins.net online store for the sale of the Foundation's DVDs to the public.

16. Professor Dawkins paid Timonen \$20,000 in November 2006, \$20,000 in May 2007, \$20,000 in February 2008, \$25,000 in January 2009, and \$25,000 in early 2010, a total of \$110,000, for services benefiting Professor Dawkins and the Foundation.

17. From approximately November 2007 to May 2010, the Foundation made monthly or bi-monthly payments to Timonen and/or Upper Branch for work benefiting the Foundation. The Foundation paid \$5,000 per month from November 2007 to July 2009, \$2,500 bi-monthly from August 2009 to October 2009, \$3,125 bi-monthly from November 2009 to January 2010, and \$2,875 bi-monthly from February 2010 to May 2010, for a total of more than \$173,000.

18. In all, from approximately November 2006 to May 2010, Professor Dawkins and the Foundation made regular payments to Timonen and/or Upper Branch totaling more than \$283,000 for work benefiting the Foundation as described below.

19. Between 2006 and 2010, the Foundation paid more than \$30,000 in travel costs for Timonen and others with Upper Branch in connection with the filming of videos for the Foundation as described below.

1       20. Between 2006 and 2010, the Foundation paid more than \$50,000 for  
2 camera, editing, and other video-related equipment used by Timonen and Upper  
3 Branch to film and edit videos and DVDs for the Foundation as described below.

4       21. In 1991, Professor Dawkins was honored to be invited to deliver The  
5 Royal Institution Christmas Lectures for Children. His series of five one hour lectures  
6 "on life, the universe, and our place in it" were filmed and first broadcast by the BBC  
7 in that year (the "Dawkins Lectures"). The BBC called the Dawkins Lectures  
8 "Growing Up in the Universe."

9       22. In 2006, Professor Dawkins, in conjunction with the British Humanist  
10 Association, decided to introduce "Growing Up in the Universe" to British school  
11 children and others who had not had the opportunity to see the Dawkins Lectures 15  
12 years earlier. Professor Dawkins and the UK Foundation donated funds to produce a  
13 written curriculum to accompany a DVD of the Dawkins Lectures. In addition, in  
14 July 2006, Professor Dawkins personally paid to acquire the copyrights to all five  
15 Dawkins Lectures from the copyright holder.

16       23. In March 2007, Professor Dawkins paid for the preparation of artwork  
17 and packaging as well as the manufacturing of 6,000 2-DVD packages of "Growing  
18 Up in the Universe." Professor Dawkins contributed his copyrights in the Dawkins  
19 Lectures and all the "Growing Up in the Universe" product, artwork and packaging he  
20 had paid for to the Foundation, with the express intent of devoting the profits from the  
21 DVD sales to the continued benefit and operation of the Foundation.

22       24. Hyperlinks to the British company selling "Growing Up in the Universe"  
23 DVDs (Burning Shed/Noisebox) were placed on the websites for the Foundation and  
24 the UK Foundation. Timonen designed these websites for the Foundation and the UK  
25 Foundation and included on both websites specific representations – first posted  
26 online on April 1, 2007 – assuring the public that purchasers of "Growing Up in the  
27 Universe" would be benefiting RDFRS. These statements, authored by Timonen,  
28 included "BUY THE DVD NOW (All proceeds go to RDF)," "BUY THE DVD

1 through our online store (All proceeds go to RDF)" and "All proceeds from the sale of  
2 this DVD are donated to The Richard Dawkins Foundation for Reason and Science."

3       25. The Foundation is informed and believes and therefore alleges that  
4 Timonen caused these representations to remain on the Foundation's and the UK  
5 Foundation's websites continually from April 1, 2007 until at least May 22, 2010  
6 when Timonen notified the Foundation that he was resigning.

7       26. The Foundation also made "Growing Up in the Universe" available, for  
8 free, through its website. *See <http://old.richarddawkins.net/videos/1875-39-growing-up-in-the-universe-39-now-available-free-online#>* (posted 12 November 2007)  
9 (announcing "***The Richard Dawkins Foundation for Reason and Science is proud to  
10 announce that it is now offering all 5 hours of Richard Dawkins' 1991 Royal  
11 Institution Lectures for Children titled "Growing Up in the Universe" for free  
12 online!***" (emphasis added))

14       27. At the direction of Professor Dawkins on behalf of the Foundation,  
15 Timonen created a master copy of Growing Up in the Universe and delivered the  
16 master discs containing the Growing Up in the Universe DVDs and all related artwork  
17 to the Foundation.

18       28. At all relevant times, the Foundation owned, controlled, managed, and  
19 paid for its website, "<http://richarddawkins.net>." The Foundation also owned,  
20 controlled, managed, and paid for the servers that hold and deliver content to the  
21 Foundation's website.

22       29. When the Foundation upgraded its website in mid 2012, it preserved and  
23 archived the information then available on the older version of the website by creating  
24 a third-level domain, "<http://old.richarddawkins.net>" which remains available on the  
25 internet today.

26 **The Creation and Operation of "The Store"**

27       30. In 2007, the Foundation and Timonen agreed it would be a good idea to  
28 create an online store ("The Store") to help market the "Growing Up in the Universe"

1      DVDs, T-shirts, caps, mugs, pins and other merchandise related to the Foundation's  
2      mission and charitable goals.

3            At the time, the Foundation's Trustees believed that legal requirements  
4      (particularly controls imposed on Professor Dawkins and the UK Foundation by the  
5      British Charities Commission) made it legally impermissible for The Store to be  
6      operated by the Foundation. This information was shared with Timonen and he  
7      agreed to operate The Store through his personal company, Upper Branch, for the  
8      benefit of the Foundation. (It was not until years later that the Foundation's Trustees  
9      learned their belief that the Foundation could not operate The Store directly had been  
10     incorrect from the start. The Foundation is informed and believe and therefore alleges  
11     that the Foundation was never, in fact, legally prohibited from operating The Store  
12     under U.S. or UK law.)

13           The Foundation and Timonen agreed that (i) Professor Dawkins and the  
14     Foundation would fund the creation and operation of The Store (primarily with seed  
15     money generated by the sale of "Growing Up in the Universe" DVDs), (ii) The Store  
16     would operate as a component of the Foundation's website (from a virtual, online  
17     perspective), (iii) proceeds from the operation of The Store would be used to pay for  
18     the production of merchandise, rent, phone lines, internet connections, server fees,  
19     miscellaneous operating costs, and travel expenses; and (iv) that any profits would go  
20     to the Foundation.

21           The Store has conducted operations under the <http://richarddawkins.net>  
22     domain from its inception to the present time, using the uniform resource locators  
23     <http://richarddawkins.net/store> and <http://store.richarddawkins.net/>.

24           **The Creation of Videos and DVDs for the Foundation and the Posting of the  
25     Videos to the Foundation's Web Site and YouTube Channel by Timonen**

26           In 2007, Dr. Cornwell, Professor Dawkins, and others at the Foundation  
27     came up with the idea of filming Professor Dawkins and other prominent scientists  
28     and intellectuals, posting videos of their discussions and lectures on the internet, and

1 selling copies of DVDs of the discussions and lectures, all as a way to further the  
2 Foundation's mission of educating the public and to encourage support for and  
3 donations to the Foundation. As Timonen himself told viewers of the Foundation's  
4 website in a comment he made in February 2009,

5 Comment 5 by Josh Timonen

6 First and foremost [the Foundation] is about educating the public, in  
7 as many ways as we can. *The DVDs are a way for our supporters*  
8 *to help us fund these video projects (in addition to donations), but*  
9 *we want these videos to be available to everyone, everywhere, all*  
10 *the time.* Email them, tell your coworkers about them around the  
11 water cooler, etc.

12 All of us can help spread rational thinking and scientific ideas.

13 Josh

14 PS: I was up in Oregon visiting my family for Thanksgiving last  
15 year, and a friend of mine started telling me about this great video  
16 he saw online with Richard Dawkins, Christopher Hitchens, etc—  
17 just having this great discussion that you'd never see on TV, and  
18 how it really made him think, and how much he loved it. Of course I  
19 was excitedly trying to tell him that I shot it!—but that's beside the  
20 point. *What matters is that the video is out there on the web for all*  
21 *to discover.*

22 See [http://old.richarddawkins.net/videos/3625-the-four-horsemen-hd-now-](http://old.richarddawkins.net/videos/3625-the-four-horsemen-hd-now-on-youtube)  
23 [on-youtube](#) (Comment 5 by Josh Timonen, posted 23 February 2009 at 4:55  
24 AM) (emphasis added).

25 **Atheist Alliance International (“AAI”) 2007 Convention**

26 35. In late 2007, Professor Dawkins invited a number of prominent scientists  
27 and intellectuals to speak at the Atheist Alliance International (“AAI”) 2007  
28 Convention held in Washington, D.C., including philosopher, writer, and cognitive

1 scientist Daniel Dennett, psychiatrist, lecturer, and current Foundation Trustee J.  
2 Anderson Thomson, author, journalist, and public intellectual Christopher Hitchens,  
3 author, philosopher, and neuroscientist Sam Harris, and others.

4       36. The AAI and the Foundation agreed that the Foundation would film the  
5 speakers at the Convention, and the Foundation asked Timonen to help film the  
6 speakers, edit the videos, and post the videos on the Foundation's web page and  
7 YouTube channel.

8       37. Professor Dawkins and Dr. Cornwell made the decisions on behalf of the  
9 Foundation as to which speakers to invite, and the Foundation paid the travel costs for  
10 Timonen and others to film the speakers and edit the videos. The Foundation also  
11 paid for equipment used to film the speakers and edit the videos.

12       38. After the AAI Convention, and beginning in about October 2007, at the  
13 Foundation's request and direction, and as part of their work for the Foundation,

14           a. Timonen and Upper Branch posted the videos of the speakers'  
15 individual presentations to the Foundation's website, *see, e.g.*,  
16 <http://old.richarddawkins.net/videos/1710-we-few-we-happy-few-we-band-of-brothers>  
17 (Andy Thomson, posted 3 October 2007); <http://old.richarddawkins.net/videos/4600-good-reasons-for-39-believing-39-in-god> (Dan Dennett, posted 10 November 2009);  
18 <http://old.richarddawkins.net/videos/4599-the-new-atheism> (Richard Dawkins, posted  
19 10 November 2009);

20           b. Timonen and Upper Branch made "QuickTime" versions of the  
21 videos of the speakers' individual presentations, delivered the QuickTime videos to  
22 the Foundation's web servers, and posted links to the QuickTime videos to the  
23 Foundation's website making them available for viewing and download by the public,  
24 *see id.* (showing "QuickTime" links);

25           c. Timonen and Upper Branch posted videos of the speakers'  
26 individual presentations to the Foundation's YouTube channel making them available  
27

1 for viewing and download by the public, *see id.* (showing YouTube links on first page  
2 of post);

3 39. In posting the Dennett and Dawkins lectures, Timonen wrote, “This is  
4 NOT the new talk from AAI 2009, this is from 2007. *I just wanted to get it up on our*  
5 *youtube channel.* – Josh”). See [http://old.richarddawkins.net/videos/4600-good-](http://old.richarddawkins.net/videos/4600-good-reasons-for-39-believing-39-in-god)  
6 <http://old.richarddawkins.net/videos/4599-the-new-atheism> (emphasis added).

7 40. At the Foundation’s request and direction, Timonen created a DVD of the  
8 speakers’ individual presentations, entitled “AAI 2007 Convention,” and began selling  
9 copies of the DVD through The Store on or about 4 December 2007, *see*  
10 <http://old.richarddawkins.net/videos/1778-aai-07-dvds-by-rdfors-are-now-available#>.  
11 Timonen also delivered master discs containing the AAI 2007 Convention DVDs and  
12 all related artwork to the Foundation. The Foundation has these master discs and also  
13 has the QuickTime videos that Timonen delivered to the Foundation.  
14

15 41. In June 2010, Timonen caused Upper Branch to assign all copyrights to  
16 the AAI 2007 Convention DVD to the Foundation in writing. A copy of this written  
17 assignment is attached to Upper Branch’s Complaint and First Amended Complaint in  
18 the Related Case. At the time of this assignment, Upper Branch represented to the  
19 Foundation that this DVD and another DVD entitled “Pat Condell Anthology” were  
20 the only two of the Foundation’s works for which Upper Branch had filed copyright  
21 registrations.

## 22       **The Four Horsemen**

23 42. As the Foundation was putting together its list of speakers for the AAI  
24 2007 Convention, Dr. Cornwell came up with the idea of filming a conversation  
25 among several of the speakers and making their discussion available to the public  
26 through videos and a DVD release.

27 43. In furtherance of that idea, the Foundation convened a first-of-its-kind,  
28 unmoderated, two-hour discussion among Professor Dawkins, Daniel Dennett, Sam

1 Harris, and Christopher Hitchens. The discussion took place on 30 September 2007 in  
2 Washington, DC and was filmed by Timonen at the Foundation's request.

3 44. The Foundation and Professor Dawkins determined who to invite to  
4 participate in the discussion, paid Timonen to film and edit the discussion, and paid  
5 for equipment used to film and edit the video of the discussion.

6 45. After the discussion, at the Foundation's request and direction, and as  
7 part of their work for the Foundation,

8 a. Timonen and Upper Branch posted a video of the two-hour  
9 discussion, entitled "The Four Horsemen," on the Foundation's website on or about  
10 14 December 2007, *see* <http://old.richarddawkins.net/videos/2025-the-four-horsemen-available-now-on-dvd> (posted 14 December 2007);

12 b. Timonen and Upper Branch made a "QuickTime" version of the  
13 Four Horsemen video, delivered the QuickTime video to the Foundation's web  
14 servers, posted a link to the QuickTime video to the Foundation's website, and made  
15 the video available for viewing and download, *see id.* (showing the "Quicktime"  
16 download link);

17 c. Timonen and Upper Branch also created and posted links on the  
18 Foundation's website further making the video available for viewing and download  
19 through "Google Video" and a "Torrent" file, *see id.* (showing the "Google Video"  
20 and "Torrent" links);<sup>1</sup> and

21 d. Timonen and Upper Branch posted a copy of the Four Horsemen  
22 video to the Foundation's YouTube channel making it available for viewing and  
23 download by the public, *see* <http://old.richarddawkins.net/videos/3625-the-four->

26 \_\_\_\_\_  
27 <sup>1</sup> A "torrent" file "is a computer file that contains metadata about the files to be shared and  
28 about the tracker, the computer that coordinates the file distribution." *See*  
[http://en.wikipedia.org/wiki/Torrent\\_file](http://en.wikipedia.org/wiki/Torrent_file). Google Video "was a video search engine, and formerly a  
free video sharing website, from Google Inc." *See* [http://en.wikipedia.org/wiki/Google\\_Videos](http://en.wikipedia.org/wiki/Google_Videos).

1 horsemen-hd-now-on-youtube. In posting this video, Timonen encouraged viewers to  
2 “[b] sure to subscribe” to the Foundation’s YouTube channel and announced:

3       *This video is provided free online by The Richard Dawkins*  
4       *Foundation for Reason and Science* (RDFRS) and  
5       http://RichardDawkins.net. If you would like to support our work  
6       and help us provide more videos like this, please purchase the DVD  
7       through our online store

8       ...

9       and/or donate to RDFRS.

10      *Id.* (emphasis added).

11     46. In a comment to his posting of the Four Horsemen video, Timonen told  
12     viewers that “[the Foundation] is about educating the public, in as many ways as we  
13     can” and that “*we want these videos to be available to everyone, everywhere, all the*  
14     *time.*” *Id.* (Comment 5 by Josh Timonen, posted 23 February 2009 at 4:55 AM)  
15     (emphasis added). Timonen specifically encouraged the public, “*Email them, tell*  
16     *your coworkers about them around the water cooler, etc.*” because “[w]hat matters  
17     is that the video is out there on the web for all to discover.” *Id.* (emphasis added).

18     47. At the Foundation’s request and direction, Timonen and Upper Branch  
19     created a DVD of the discussion, also entitled “The Four Horsemen,” and began  
20     selling copies of the DVD through The Store on or about 14 December 2007, see  
21     http://old.richarddawkins.net/videos/1778-aai-07-dvds-by-rdfs-are-now-available#.  
22     Timonen and Upper Branch also delivered master discs containing The Four  
23     Horsemen DVD and all related artwork to the Foundation. The Foundation has these  
24     master discs and also has the QuickTime videos that Timonen delivered to the  
25     Foundation.

26       **Galapagos Videos**

27     48. In 2007, Professor Dawkins invited Timonen to accompany him on a trip  
28     to the Galapagos Islands to help film and create video vignettes of “tales” to be posted

1 on the Foundation's web page and YouTube channel. The tales consist of footage of  
 2 the Galapagos Islands as a backdrop to Professor Dawkins narratives on topics  
 3 relating to evolution.

4       49. In furtherance of its mission, the Foundation and Professor Dawkins  
 5 directed the creation of the video vignettes, organized and arranged for the filming,  
 6 determined the subjects and content of the videos, provided the narrative content for  
 7 the videos, paid for equipment used to film and edit the videos, and asked Timonen to  
 8 take footage of the trip to be used with Professor Dawkins' narratives. Timonen's  
 9 travel costs were paid for as a guest of Professor Dawkins.

10      50. After returning from the Galapagos, at the Foundation's request and  
 11 direction, and as part of their work for the Foundation,

12       a. Timonen and Upper Branch created and posted videos of Professor  
 13 Dawkins' narratives on the Foundation's website beginning in or about 20 February  
 14 2008, *see, e.g.*, <http://old.richarddawkins.net/videos/2292-the-lava-lizard-39-s-tale>  
 15 ("The Lava Lizard's Tale," posted 20 February 2008);  
<http://old.richarddawkins.net/videos/2306-the-giant-tortoise-39-s-tale> ("The Giant  
 16 Tortoise's Tale," posted 25 February 2008);

17       b. Timonen and Upper Branch made "QuickTime" versions of the  
 18 videos, delivered the QuickTime videos to the Foundation's web servers, posted links  
 19 to the QuickTime videos to the Foundation's website, and made the video available  
 20 for viewing and downloading for free, *see id.* (showing links to "Quicktime" videos);

21       c. Timonen and Upper Branch posted copies of the videos to the  
 22 Foundation's YouTube channel making them available for viewing and download by  
 23 the public, *see id.* (showing YouTube links).

#### 24           **Discussions with Richard Dawkins: Voices of Science**

25      51. During his 2008 book tour of the United States, Professor Dawkins met  
 26 with a number of leading scientists, including Nobel Prize-winning physicist Steven  
 27 Weinberg, physicist Lawrence Krauss, and biologist PZ Myers, to discuss a wide  
 28

1 range of topics including biology, quantum physics, evolution, education, religion,  
2 and atheism.

3       52. In furtherance of its mission, the Foundation decided to film these  
4 interviews and to make videos of the interviews available to the public. The  
5 Foundation organized and arranged for these interviews and discussions, determined  
6 which scientists would be interviewed by Professor Dawkins and where the interviews  
7 would take place, paid most of the travel costs associated with the interviews, asked  
8 Timonen to film and edit the interviews, paid for Timonen's travel costs associated  
9 with the interviews, and paid for equipment used to film and edit the interviews.

10      53. After the interviews took place, at the Foundation's request and direction,  
11 and as part of their work for the Foundation,

12           a. Timonen and Upper Branch posted videos of the interviews on the  
13 Foundation's website beginning in or about 14 April 2008, *see*

14 <http://old.richarddawkins.net/videos/2472-richard-dawkins-and-lawrence-krauss>

15 (Krauss discussion posted on or about 14 April 2008);

16 <http://old.richarddawkins.net/videos/2868-voices-of-science-available-now-on-dvd>

17 (Weinberg discussion, posted on or about 15 July 2008);

18 <http://old.richarddawkins.net/videos/2894-voices-of-science-pz-myers-buy-it-now-on-dvd>

19 (Myers discussion, posted on or about 23 July 2008);

20           b. Timonen and Upper Branch made "QuickTime" versions of the  
21 videos, delivered the QuickTime videos to the Foundation's web servers, posted links  
22 to the QuickTime videos to the Foundation's website, and made the video available  
23 for viewing and downloading for free, *see id.* (showing links to "Quicktime" videos);

24           c. Timonen and Upper Branch also created and posted a link on the  
25 Foundation's website further making the video of the Krauss discussion available for  
26 viewing and download through "Google Video," *see*

27 <http://old.richarddawkins.net/videos/2472-richard-dawkins-and-lawrence-krauss>

28 (showing the "Google Video" links); and

1                   d. Timonen and Upper Branch posted copies of the interviews with  
 2 Krauss, Weinberg, and Myers to the Foundation's YouTube channel making them  
 3 available for viewing and download by the public, *see id.* (showing YouTube links).

4                 54. In response to a comment by one user as to who could be the first to  
 5 upload the website version of the Weinberg discussion to YouTube, Timonen wrote,  
 6 "*I'm uploading it to youtube... so you don't have to do that! - Josh.*" See  
 7 <http://old.richarddawkins.net/videos/2868-voices-of-science-available-now-on-dvd>  
 8 (Comment 3 by Josh Timonen, posted 15 July 2008 at 6:01 AM) (emphasis added).

9                 55. And because of the high demand for the videos, Timonen also told  
 10 everyone that he would "try and get the bittorrent going as well," *see id.* (Comment 9  
 11 by Josh Timonen, posted 15 July 2008 at 6:50 AM), providing yet another way for the  
 12 public to access, view, and download the video.

13                 56. At the Foundation's request and direction, Timonen and Upper Branch  
 14 created a DVD containing four of the discussions, entitled "Voices of Science," and  
 15 began selling copies of the DVD through The Store on or about 23 July 2008, *see*  
 16 <http://old.richarddawkins.net/videos/2894-voices-of-science-pz-myers-buy-it-now-on-dvd>.  
 17 Timonen and Upper Branch also delivered master discs containing the Voices of  
 18 Science DVD and all related artwork to the Foundation. The Foundation has these  
 19 master discs and also has the QuickTime videos that Timonen delivered to the  
 20 Foundation.

### 21                 **Professor Dawkins' March 2, 2008 Lecture at UC Berkeley**

22                 57. During his 2008 US tour, Professor Dawkins gave a lecture at UC  
 23 Berkeley on his book, *The God Delusion*. In furtherance of its mission, the  
 24 Foundation decided to film the lecture and to make videos of the lecture and the  
 25 following Q&A session available to the public. The Foundation organized and  
 26 arranged for the filming of the lecture, provided the content for the lecture through  
 27 Professor Dawkins, asked Timonen and others to film and/or edit the lecture, paid for  
 28

1 the travel costs of Timonen and others associated with filming the lecture, and paid for  
 2 equipment used to film and edit the lecture.

3 58. After the Berkeley lecture, at the Foundation's request and direction, and  
 4 as part of their work for the Foundation,

5 a. Timonen and Upper Branch posted videos of the lecture and the  
 6 Q&A session on the Foundation's website beginning in or about 15 August 2008, *see,*  
 7 *e.g.*, <http://old.richarddawkins.net/videos/2989-richard-dawkins-lecture-at-uc-berkeley>  
 8 (Lecture, posted 15 August 2008); <http://old.richarddawkins.net/videos/3001-q-amp-a-with-richard-dawkins-after-lecture-at-uc-berkeley> (Q&A, posted 18 August 2008);

9  
 10 b. Timonen and Upper Branch made "QuickTime" versions of the  
 11 videos, delivered the QuickTime videos to the Foundation's web servers, posted links  
 12 to the QuickTime videos to the Foundation's website, and made the videos available  
 13 for viewing and downloading for free, *see id.* (showing links to "Quicktime" videos);

14 c. Timonen and Upper Branch posted copies of the videos to the  
 15 Foundation's YouTube channel making them available for viewing and download by  
 16 the public, *see id.* (showing YouTube links).

#### 17 **AAI 2009 Convention**

18 59. The Foundation co-sponsored the AAI 2009 Conference, which took  
 19 place in Burbank, California on October 3, 2009. The Foundation and Professor  
 20 Dawkins invited a number of prominent scientists and intellectuals to speak at the  
 21 Conference, including satirist and filmmaker Brian Keith Dalton (aka "Mr. Deity"),  
 22 Andy Thomson, Lawrence Krauss, biologist and well-known author Jerry Coyne,  
 23 planetary scientist and NASA consultant Carolyn Porco, Daniel Dennett, physical  
 24 anthropologist and executive director of the National Center for Science Education  
 25 Eugenie Scott, and others.

26 60. The AAI and Foundation agreed that the Foundation would film the  
 27 speakers at the Conference, and the Foundation asked Timonen to help film the  
 28

1 speakers, edit the videos, and post the videos on the Foundation's web page and  
 2 YouTube channel.

3       61. Professor Dawkins and Dr. Cornwell made the decisions on behalf of the  
 4 Foundation as to which speakers to invite, and the Foundation paid the travel costs for  
 5 several of the speakers to attend the event and for Timonen and others to film the  
 6 speakers. The Foundation also paid for equipment used to film the speakers and edit  
 7 the videos.

8       62. After the AAI Conference, and beginning on or about 9 October 2009, at  
 9 the Foundation's request and direction, and as part of their work for the Foundation,

10           a. Timonen and Upper Branch posted the videos of the speakers'  
 11 individual presentations to the Foundation's website, *see, e.g.*,  
 12 <http://old.richarddawkins.net/videos/4431-39-design-vs-chance-39-by-pz-myers-AAI-2009> (Myers presentation posted 9 October 2009);

13 <http://old.richarddawkins.net/videos/4459-from-the-heavens-or-from-nature-the-origins-of-morality> (Thomson presentation posted 15 October 2009);

14 <http://old.richarddawkins.net/videos/642172-a-universe-from-nothing-by-lawrence-krauss-AAI-2009> (Krauss presentation posted 21 October 2009);

15 <http://old.richarddawkins.net/videos/4547-39-the-evolution-of-confusion-39> (Dennett presentation posted 29 October 2009); <http://old.richarddawkins.net/videos/4561-39-why-evolution-is-true-39> (Coyne presentation posted 3 November 2009);

16 <http://old.richarddawkins.net/videos/4601-science-in-hollywood> (Porco presentation posted 11 November 2009); <http://old.richarddawkins.net/videos/4605-mr-deity-and-cast-at-the-AAI-2009-conference> (Mr. Deity & Cast presentation posted 12 November 2009); <http://old.richarddawkins.net/videos/4629-there-is-grandeur-in-this-view-of-life> (Dawkins posted 17 November 2009); <http://old.richarddawkins.net/videos/4714-39-creationism-still-crazy-after-all-these-years-39> (Scott presentation posted 3 December 2009);

1                   b. Timonen and Upper Branch made “QuickTime” versions of the  
 2 videos of the speakers’ individual presentations, delivered the QuickTime videos to  
 3 the Foundation’s web servers, and posted links to the QuickTime videos to the  
 4 Foundation’s website making them available for viewing and download by the public,  
 5 *see id.* (showing “Download QuickTime” links);

6                   c. Timonen and Upper Branch posted videos of the speakers’  
 7 individual presentations to the Foundation’s YouTube channel making them available  
 8 for viewing and download by the public, *see id.* (showing YouTube links on first page  
 9 of post);

10                  63. At the Foundation’s request and direction, Timonen and Upper Branch  
 11 then created a DVD of the speakers’ individual presentations, entitled “AAI 2009  
 12 Conference,” and began selling copies of the DVD through The Store in 2009, *see*  
 13 <http://old.richarddawkins.net/videos/4547-39-the-evolution-of-confusion-39>  
 14 (Comment 64 by Josh Timonen, posted 2 November 2009 at 11:01 AM, “AAI 2009  
 15 DVDs will be in the store soon, maybe a month or so. Josh”). Timonen and Upper  
 16 Branch also delivered master discs containing the AAI 2009 Conference DVD and all  
 17 related artwork to the Foundation. The Foundation has these master discs and also has  
 18 the QuickTime videos that Timonen delivered to the Foundation.

19                  **Break the Science Barrier**

20                  64. Break the Science Barrier was originally broadcast on Britain’s  
 21 Channel 4 in 1996. In the film, Professor Dawkins interviews and explores the  
 22 wonders of science with a variety of people who have experienced the wonders of  
 23 science first-hand. The Foundation obtained the rights to make and distribute DVDs  
 24 of the film, asked Timonen and Upper Branch to edit and remaster the video and  
 25 prepare the DVD cover, paid Timonen and Upper Branch to do so, and paid for  
 26 equipment used to do the editing. Timonen and Upper Branch performed this work as  
 27 part of their work for the Foundation.

1       65. The Foundation made the film available on DVD in or about February  
 2 2008. *See* <http://old.richarddawkins.net/videos/2234-break-the-science-barrier-available-now-on-dvd> (posted 6 February 2008). Timonen and Upper Branch also  
 3 delivered master discs containing the Break the Science Barrier DVD and all related  
 4 artwork to the Foundation, which the Foundation still has.  
 5

6       **The IWC Media Channel 4 Documentaries**

7       **Root of all Evil? and Root of all Evil: The Uncut Interviews**

8       66. The Root of All Evil? is a television documentary written and presented  
 9 by Professor Dawkins in which he argues that humanity would be better off without  
 10 religion or belief in God. The documentary was first broadcast in January 2006, in the  
 11 form of two 45-minute episodes on Channel 4 in the UK. The documentary explores  
 12 the unproven beliefs that are treated as factual by many religions and the extremes to  
 13 which some followers have taken them.

14       67. The Foundation secured the rights to distribute the documentary online  
 15 from IWC Media. The Foundation also secured the rights to the raw tapes of the  
 16 interviews that Professor Dawkins conducted for this documentary.

17       68. At the request and direction of the Foundation, and as part of their work  
 18 for the Foundation, Timonen and Upper Branch created DVDs, DVD covers, and  
 19 DVD menus and music for the documentary and the uncut interviews for online  
 20 distribution. The Foundation paid Timonen and Upper Branch to do this work. The  
 21 Foundation began distributing the Root of all Evil? and the Root of all Evil: The  
 22 Uncut Interviews DVDs in or about September 2007 through The Store. *See*  
 23 <http://old.richarddawkins.net/videos/1605-39-root-of-all-evil-the-uncut-interviews-39-released-on-dvd#page1> (posted 4 September 2007) (announcing "COMING SOON! "Root of All Evil? The Original Program in a special new edition created by RichardDawkins.net!"). Timonen and Upper Branch delivered master discs  
 27 containing the Root of all Evil? and the Root of all Evil: The Uncut Interviews DVDs  
 28

and all related artwork, menus, and music to the Foundation, which the Foundation still has.

69. In his post announcing the release of the Root of All Evil? DVD, Timonen assured viewers that "*All proceeds (minus royalties to IWC, who own the program) go to The Richard Dawkins Foundation for Reason and Science.*"

<http://old.richarddawkins.net/videos/1661-39-root-of-all-evil-the-original-program-39-available-now-on-dvd> (Comment 3 by Josh Timonen posted on 19 September 2007 at 8:01 AM) (emphasis added).

## **The Enemies of Reason and The Enemies of Reason The Uncut Interviews**

70. The Enemies of Reason is a two-part television documentary, written and presented by Professor Dawkins, in which he seeks to expose areas of belief that exist without scientific proof, yet manage to hold people under their spell. The documentary was first broadcast on Channel 4 in the UK as a successor to Professor Dawkins' documentary of the previous year, The Root of All Evil?. It includes interviews with Steve Fuller, Deepak Chopra, Satish Kumar, and Derren Brown.

71. The Foundation secured the rights to distribute this documentary online from IWC Media. The Foundation also secured the rights to the raw tapes of the interviews that Professor Dawkins conducted for this documentary.

72. At the request and direction of the Foundation, and as part of their work for the Foundation, Timonen and Upper Branch created DVDs, and DVD covers for the documentary and the uncut interviews for online distribution. The Foundation paid Timonen and Upper Branch to do this work. The Foundation began distributing The Enemies of Reason and The Enemies of Reason The Uncut Interviews DVDs in or about August 2008 through The Store. *See*

<http://old.richarddawkins.net/articles/2984-enemies-of-reason-available-now-on-dvd#page1> (posted 8 August 2008); <http://old.richarddawkins.net/videos/3414-richard-dawkins-interviews-derren-brown> (posted 10 December 2008). Timonen and

1 Upper Branch also delivered master discs containing The Enemies of Reason and The  
 2 Enemies of Reason The Uncut Interviews DVDs and all related artwork to the  
 3 Foundation, which the Foundation still has.

4                   **The Genius of Charles Darwin and The Genius of Charles Darwin**  
 5                   **The Uncut Interviews**

6           73. The Genius of Charles Darwin is a three-part television documentary,  
 7 written and presented by Professor Dawkins. It was first shown in August 2008 on  
 8 Channel 4 in the UK. The documentary won Best TV Documentary Series 2008 at the  
 9 January 2009 British Broadcast Awards.

10          74. The Foundation secured the rights to distribute this documentary online  
 11 from IWC Media. The Foundation also secured the rights to the raw tapes of the  
 12 interviews that Professor Dawkins conducted for this documentary.

13          75. At the request and direction of the Foundation, Timonen and Upper  
 14 Branch created DVDs and DVD covers for the documentary and the uncut interviews  
 15 for online distribution. The Foundation paid Timonen and Upper Branch to do this  
 16 work. The Foundation began distributing The Genius of Charles Darwin and The  
 17 Genius of Charles Darwin The Uncut Interviews DVDs in mid 2008 through The  
 18 Store. *See* <http://old.richarddawkins.net/videos/2925-on-tv-the-genius-of-charles-darwin-presented-by-richard-dawkins> (posted 31 July 2008). Timonen and Upper  
 20 Branch also delivered master discs containing The Genius of Charles Darwin and The  
 21 Genius of Charles Darwin The Uncut Interviews DVDs, additional video footage, and  
 22 all related artwork to the Foundation, which the Foundation still has.

23                   **Pat Condell Anthology**

24          76. Pat Condell is an English writer, political commentator, and comedian.  
 25 In early 2007, he began posting short monologues on the internet denouncing religion.  
 26 Professor Dawkins approached Mr. Condell and requested permission to create a  
 27 DVD of the monologues, which he agreed to.

1       77. At the request and direction of the Foundation, and as part of their work  
 2 for the Foundation, Timonen and Upper Branch compiled the monologues into a DVD  
 3 for distribution. The Foundation paid Timonen and Upper Branch to do this work.  
 4 The Foundation began distributing the DVD, entitled Pat Condell Anthology Feb  
 5 2007 – Feb 2008 in or about 28 April 2008 through The Store. See  
 6 <http://old.richarddawkins.net/articles/2517-pat-condell-anthology-dvd-available-now>  
 7 (posted 28 April 2008). Timonen and Upper Branch also delivered master discs  
 8 containing Pat Condell Anthology Feb 2007 – Feb 2008 DVD and all related artwork  
 9 to the Foundation, which the Foundation still has.

10      78. In June 2010, Timonen and Upper Branch caused Upper Branch to assign  
 11 all copyrights to the Pat Condell Anthology Feb 2007 – Feb 2008 DVD to the  
 12 Foundation in writing. A copy of this written assignment is attached to Upper  
 13 Branch's Complaint and First Amended Complaint in the Related Case.

14           **Richard Dawkins Appearances and Events 2007-2008**

15      79. Richard Dawkins Appearances and Events 2007-2008 contains videos of  
 16 a series of lectures given by Professor Dawkins during his tour in support of his  
 17 bestselling book, *The God Delusion*. The DVD also includes two biology lectures that  
 18 Professor Dawkins delivered during a trip to the Galapagos Islands.

19      80. In furtherance of its mission, the Foundation decided to film the lectures  
 20 and to make videos of the lectures available to the public. The Foundation organized  
 21 and arranged for the filming of the lectures, provided the content for the lectures  
 22 through Professor Dawkins, asked Timonen and others to film the lectures and edit the  
 23 videos, paid for the travel costs of Timonen and others associated with filming the  
 24 lectures, paid Timonen and Upper Branch to film and edit the videos and create the  
 25 DVD, and paid for equipment used to film and edit the lectures.

26      81. At the Foundation's request and direction, and as part of their work for  
 27 the Foundation, Timonen and Upper Branch created a DVD of the lectures, entitled  
 28 Richard Dawkins Appearances and Events 2007-2008, and the Foundation began

1 selling copies of the DVD through The Store in or about October 2008. See  
 2 <http://old.richarddawkins.net/articles/3268-new-dvd-richard-dawkins-appearances-amp-events-2007-2008> (posted on or before 23 October 2008). Timonen and Upper  
 3 Branch also delivered master discs containing Richard Dawkins Appearances and  
 4 Events 2007-2008 DVD and all related artwork to the Foundation, which the  
 5 Foundation still has.

7       82. In announcing the availability of this DVD, Timonen assured viewers  
 8 that "*Proceeds from the sale of items in the RichardDawkins.net store go to The*  
 9 *Richard Dawkins Foundation and help cover expenses for RichardDawkins.net.*"  
 10 See *id.* (Comment 13 by Josh Timonen, posted on 24 October 2008 at 4:12 AM)  
 11 (emphasis added). |

### 12           **Discussions with Richard Dawkins: Voices of Reason**

13       83. Voices of Reason is the third episode in the Discussions with Richard  
 14 Dawkins series. In furtherance of its mission, the Foundation decided to film  
 15 Professor Dawkins' discussions with Aubrey Manning, Professor of Natural History at  
 16 Edinburgh University, Richard Holloway, former Bishop of Edinburgh and Head of  
 17 the Scottish Episcopal Church, Troy Jollimore, award-winning poet and Associate  
 18 Professor of Philosophy at California State University, and Lori Lipman Brown,  
 19 director and lobbyist for the Secular Coalition of America and to make videos of the  
 20 discussions available to the public.

21       84. The Foundation organized and arranged for the filming of the  
 22 discussions, determined who would participate in the discussions, and asked Timonen  
 23 to film the discussions that took place in the US and to edit the videos. Timonen did  
 24 not film the discussions with Aubrey Manning and Richard Holloway. The  
 25 Foundation paid for Timonen's travel costs associated with filming the discussions in  
 26 the US, paid Timonen and Upper Branch to film and edit the videos and create the  
 27 DVD, and paid for equipment used to film and edit the discussions.  
 28

1       85. At the Foundation's request and direction, and as part of their work for  
 2 the Foundation, Timonen and Upper Branch created a DVD of the discussions,  
 3 entitled Discussions with Richard Dawkins: Voices of Reason, and the Foundation  
 4 began selling copies of the DVD through The Store. Timonen also delivered master  
 5 discs containing the Voices of Reason DVD and all related artwork to the Foundation,  
 6 which the Foundation still has.

7                   **Timonen's Resignation from the Foundation**

8       86. On or about May 22, 2010, Timonen submitted a resignation letter to the  
 9 Foundation stating, in relevant part,

10                  I had a very long and friendly discussion with Robin this morning  
 11                  about many things, and after much reflection, I feel that it is time for  
 12                  me to transition out of the foundation as an employee. I would love  
 13                  to continue working for you directly on things related to your work  
 14                  if you're interested. . . . I am tremendously proud to have been a  
 15                  part of building [the Foundation], and grateful for having been given  
 16                  the opportunity.

17       87. By the fall of 2009, the Foundation had learned that there actually had  
 18 never been any legal impediments preventing the Foundation from operating The  
 19 Store itself and the Foundation decided to transfer The Store's operations from Upper  
 20 Branch to the Foundation. In connection with this decision, the Foundation had a  
 21 number of meetings with Timonen and The Store's operations were transferred to the  
 22 Foundation's control in or about June 2010.

23                   **Upper Branch's Bad Faith Copyright Notices to YouTube**

24       88. YouTube is a video-sharing website where millions of internet users post  
 25 videos to make them available to other for viewing. These videos range from  
 26 traditional home recordings of personal events to news reports, advertisements, and  
 27 television programs. YouTube's website is available at the web address  
 28 [www.youtube.com](http://www.youtube.com).

1       89. YouTube permits account holders to create collections of videos  
2 uploaded by or associated with the account. An account holder may prepare a short  
3 description of him or herself for the account page, and display thumbnails of the  
4 videos he or she has posted to YouTube. The account page may also display a list of  
5 “subscribers,” or YouTube users who are regularly notified about new videos  
6 associated with that user.

7       90. At the Foundation’s request, Timonen created a YouTube channel for the  
8 Foundation called “richarddawkinsdotnet.” As of October 2012, the Foundation’s  
9 YouTube channel included many dozens of videos and hundreds of thousands of  
10 subscribers and the Foundation’s videos had garnered millions of views. The high  
11 number of views increased the priority of the Foundation’s videos within YouTube’s  
12 search function, further bolstering the Foundation’s online presence and the popularity  
13 and ease of access of its videos.

14       91. Beginning in or about November 2, 2012, Upper Branch and Timonen  
15 sent a series of notices to YouTube under section 512 of the DMCA demanding that  
16 YouTube take down certain of the Foundation’s videos. On information and belief,  
17 Timonen and Upper Branch caused the notices to be sent to YouTube on November 2,  
18 5, 7, and 16, 2012.

19       92. Through these notices, Upper Branch is now claiming that the videos that  
20 Timonen delivered to the Foundation and put on the Foundation’s YouTube channel  
21 and website years ago are infringing Upper Branch’s copyrights.

22       93. As a result of Upper Branch’s notices, YouTube has removed the videos  
23 and shut down the Foundation’s entire YouTube Channel under its “three-strikes”  
24 policy, under which any user subject to three or more takedown notices will have its  
25 account terminated. The Foundation’s YouTube channel was shut down on or about  
26 November 26, 2012 and, as of this filing, remains inactive and unavailable to the  
27 Foundation or to the public.

28

1       94. Contrary to the allegations made in Upper Branch's section 512 notices,  
2 the Foundation owns, controls, and/or has rights to use, copy, and distribute the  
3 videos. As described in detail above, the videos claimed by Upper Branch depict  
4 lectures by, and discussions among, prominent professors and scientists concerning  
5 life, the universe, and the role of science in human life. Professor Dawkins plays a  
6 leading role in many of them. The Foundation organized all of the events, speakers,  
7 and materials depicted in the videos and also directed, paid for, and controlled the  
8 creation of the videos. The Foundation paid Timonen and Upper Branch to film these  
9 well-known speakers, to edit the videos, and to post the videos to the Foundation's  
10 YouTube channel for distribution to the public. And Timonen himself posted these  
11 videos to the Foundation's YouTube channel over a period of several years. These  
12 videos have been available to the public through the Foundation's YouTube channel  
13 and website for years without any claim by Timonen or Upper Branch that such  
14 distribution somehow violated Upper Branch's alleged copyrights.

15       95. Upper Branch's copyright notices are specious and, on information and  
16 belief, have been filed only because Upper Branch and Timonen recently lost a  
17 lawsuit that they had filed against the Foundation in California state court and was  
18 ordered to pay the Foundation \$55,000 in attorneys fees. *See Timonen v. The Richard*  
19 *Dawkins Foundation for Reason and Science*, Case No. EC057388, Superior Court of  
20 California, County of Los Angeles.

21       96. The Foundation is suffering real and irreparable harm from the  
22 termination of its account. The videos at issue are some of the Foundation's most  
23 popular videos and drive significant attention and interest to the Foundation and its  
24 website. With the account disabled, the Foundation's reputation and credibility are  
25 harmed and the Foundation is now unfairly deprived of its most effective educational  
26 tool – the internet – in its global effort to promote rational, scientific thought.  
27  
28

1                   **COUNT 1: 17 U.S.C. § 512(f) MISREPRESENTATION**

2                 97. The Foundation repeats and incorporates herein by reference the  
 3 allegations in the preceding paragraphs.

4                 98. The videos described in Upper Branch's November 2, 5, 7, and 16, 2012  
 5 takedown notices do not infringe any copyright owned or administered by Upper  
 6 Branch.

7                 99. Upper Branch, through its officer, Timonen, had actual subjective  
 8 knowledge of the contents of the videos described in the takedown notices and that  
 9 they did not infringe any Upper Branch copyrights on the dates it sent the takedown  
 10 notices.

11                100. Upper Branch should have known if it acted with reasonable care or  
 12 diligence, or would have had no substantial doubt if it had been acting in good faith,  
 13 that it was making misrepresentations in its notices to YouTube.

14                101. Among other misrepresentations, Upper Branch's notices claimed  
 15 copyrights that Upper Branch had previously assigned to the Foundation in writing.  
 16 In addition, Upper Branch and Timonen have known for years, in some cases for more  
 17 than five years, that the Foundation requested and paid for the videos referenced in its  
 18 notices, that Upper Branch delivered the videos to the Foundation, and that Timonen  
 19 and Upper Branch posted the videos to the Foundation's website and YouTube  
 20 channel for the express purpose of allowing the Foundation to distribute these videos  
 21 to everyone, everywhere, all the time. In sending its take down notices, Upper Branch  
 22 failed to give any consideration or conduct any review of these facts and the relevant  
 23 case law establishing that the Foundation has, at minimum, an implied license to use  
 24 and distribute these videos through its YouTube channel.

25                102. With this actual subjective knowledge, Upper Branch acted in bad faith  
 26 when it sent the takedown notices, knowingly and materially misrepresenting that it  
 27 had concluded that the videos were infringing.

1           103. Upper Branch violated 17 U.S.C. § 512(f) by knowingly and materially  
2 misrepresenting that the Foundation's videos on its YouTube account infringed Upper  
3 Branch's copyright.

4           104. As a direct and proximate result of Upper Branch's actions, the  
5 Foundation has been and continues to be injured substantially and irreparably. Such  
6 injury includes, but is not limited to, the financial expenses associated with  
7 responding to Upper Branch's claim of infringement, the loss of public goodwill  
8 resulting from Upper Branch's baseless claims of infringement, and the loss of interest  
9 in and donations to the Foundation. Each passing day increases and compounds the  
10 Foundation's harm.

11          105. The Foundation has asked Upper Branch to rescind its notices to  
12 YouTube and authorize the reinstatement of the Foundation's YouTube channel but  
13 Upper Branch has refused.

14          106. The Foundation has also requested complete copies of any notices the  
15 Upper Branch or Timonen have sent to YouTube, but again Upper Branch has refused  
16 to provide such copies.

17           **COUNT 2: DECLARATORY AND INJUNCTIVE RELIEF**

18          107. The Foundation repeats and incorporates herein by reference the  
19 allegations of the preceding paragraphs of this counterclaim.

20          108. There is a real and actual controversy between the Foundation and Upper  
21 Branch regarding whether the Foundation's use, copying, and distribution of the  
22 DVDs and videos described above infringe upon Upper Branch's alleged copyrights.

23          109. Upper Branch contends that the Foundation is infringing Upper Branch's  
24 alleged copyrights by distributing the DVDs and videos described above through its  
25 store, website, and YouTube channel.

26          110. The Foundation denies Upper Branches allegations and contends, and  
27 seeks a declaration stating, that the Foundation owns or controls the copyrights in the  
28 DVDs and videos at issue and/or that the Foundation has a perpetual, non-revocable,

non-exclusive license to retain copies of the DVDs and videos and to copy and distribute them to the public through its store, website, and YouTube channel as it has done for years.

111. Upper Branch has taken action which has resulted in the termination of the Foundation's YouTube account, and, through its Complaint in the Related Case, threatens to continue such action. Upper Branch's conduct in sending and refusing to rescind the copyright notices to YouTube is causing real and irreparable harm to the foundation for which there is no adequate remedy at law. Accordingly, the Foundation seeks a preliminary injunction ordering Upper Branch to rescind its copyright notices to YouTube and to authorize YouTube to reinstate the Foundation's account.

## PRAYER

WHEREFORE, the Foundation prays that this Court enter judgment in its favor and against Defendant Upper Branch as follows:

1. A declaration that the Foundation owns or controls the DVDs and videos described in Upper Branch's complaint in Case No. CV12-8789 MWF (RZx) and in its section 512 copyright notices to YouTube and/or that the Foundation has a perpetual, non-revocable, non-exclusive license to retain copies of the DVDs and videos and to copy and distribute them to the public through its store, website, and YouTube channel as it has done for years.

2. A declaration that the Foundation's distribution of the DVDs and videos described in Upper Branch's complaint in Case No. CV12-8789 MWF (RZx) and in its section 512 copyright notices to YouTube and conduct incident thereto does not infringe any copyright allegedly belonging to Upper Branch;

3. An order compelling Upper Branch to rescind its copyright notices to YouTube and to authorize YouTube to reinstate the Foundation's account;

#### 4. Damages according to proof;

5. Attorneys fees pursuant to 17 U.S.C. § 512(f) or otherwise allowed by law;
  6. Costs and disbursements; and
  7. Such other and further relief as the Court shall find just and proper.

Dated: December 14, 2012

BRYAN CAVE LLP

By:

*Patterson*

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Patrick J. Hagan  
Attorneys for Defendants

I (a) PLAINTIFFS (Check box if you are representing yourself )  
The Richard Dawkins Foundation for Reason and Science

DEFENDANTS  
Upper Branch Productions, Inc., a California Corporation

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Patrick J. Hagan (CA State Bar No. 266237)  
Bryan Cave LLP  
120 Broadway, Suite 300  
Santa Monica, CA 90401-2386  
310-576-2100

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

- |  |   |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)          |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only  
(Place an X in one box for plaintiff and one for defendant.)

Citizen of This State	PTF	DEF	PTF	DEF
<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input checked="" type="checkbox"/> 5	<input type="checkbox"/> 5
<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. ORIGIN (Place an X in one box only.)

- |   |   |  |   |   |  |   |
|---|---|--|---|---|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify): | <input type="checkbox"/> 6 Multi-District Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge |
|---|---|--|---|---|--|---|

V. REQUESTED IN COMPLAINT: JURY DEMAND:  Yes  No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23:  Yes  No

MONEY DEMANDED IN COMPLAINT: \$

VI. CAUSE OF ACTION (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
17 U.S.C. § 512(f) Misrepresentation; Declaratory Judgment and Injunctive Relief

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS PERSONAL INJURY	TORTS PERSONAL PROPERTY	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/ Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 22 Appeal 28 USC 158	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> PROPERTY RIGHTS
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities/ Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> SOCIAL SECURITY
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 640 R.R. & Truck 405(g))	<input type="checkbox"/> 61 HIA(1395ff)
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 891 Agricultural Act	<input type="checkbox"/> REAL PROPERTY	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 660 Occupational Safety /Health	<input type="checkbox"/> 863 DIWC/DIWW
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee		<input type="checkbox"/> 690 Other	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 465 Other Immigration Actions			<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment				<input type="checkbox"/> FEDERAL TAX SUITS
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				

FOR OFFICE USE ONLY: Case Number: \_\_\_\_\_

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed?  No  Yes

If yes, list case number(s): \_\_\_\_\_

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case?  No  Yes

If yes, list case number(s): CV 12-08789-MWF (RZX)

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply)  A. Arise from the same or closely related transactions, happenings, or events; or  
 B. Call for determination of the same or substantially related or similar questions of law and fact; or  
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.  
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District: <sup>*</sup>	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.  
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District: <sup>*</sup>	California County outside of this District; State, if other than California; or Foreign Country
	Delaware

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.  
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District: <sup>*</sup>	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):   
Patrick J. Hagán Date December 14, 2012

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge Consuelo B. Marshall and the assigned discovery Magistrate Judge is Andrew J. Wistrich.

The case number on all documents filed with the Court should read as follows:

**CV12- 10694 CBM (AJWx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

**=====**  
**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

Western Division  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

Southern Division  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

Eastern Division  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

**COPY**

Patrick J. Hagan (CA State Bar No. 266237)  
 Email: patrick.hagan@bryancave.com  
 BRYAN CAVE LLP  
 120 Broadway, Suite 300  
 Santa Monica, CA 90401-2386  
 Telephone: 310-476-2100

**FOR OFFICE USE ONLY**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

THE RICHARD DAWKINS FOUNDATION FOR  
REASON AND SCIENCE, a Delaware non-profit  
corporation,

v.

PLAINTIFF(S)

CASE NUMBER

CV12-10694 (CBM/AJWx)

UPPER BRANCH PRODUCTIONS, INC., a California  
Corporation,

DEFENDANT(S).

SUMMONS

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached  complaint         amended complaint  counterclaim  cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Patrick J. Hagan, whose address is 120 Broadway, Suite 300, Santa Monica, CA 90401-2386. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DEC 14 2012

Dated: \_\_\_\_\_

Clerk, U.S. District Court

By: \_\_\_\_\_

JULIE PRADO

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

**FOR OFFICE USE ONLY**